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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPLE GATE,

Defendant.

No. CR 06-0173 VRW

**STIPULATION AND ~~[PROPOSED]~~
ORDER RE: (1) EXAMINATION OF
DEFENDANT, (2) RULE 16
DISCLOSURES, (3) EXCLUSION OF
TIME UNDER THE SPEEDY TRIAL
ACT, AND (4) CONTINUANCE OF
TRIAL DATE**

In an effort to prepare this matter for trial, plaintiff United States of America and defendant Apple Gate hereby stipulate as follows:

1. Defendant believes that the crime charged in the indictment, 18 U.S.C. § 115, is a specific-intent crime and accordingly plans to raise a defense of diminished capacity. The Defendant is planning to file a motion regarding this defense in the near future, which will result in an automatic exclusion of time under the Speedy Trial Act. If either (a) the United States ultimately concurs that the charged crime is a specific-intent crime, or (b) the Court reviews the defendant's motion and holds that the charged crime is a specific-intent crime, the defendant agrees to submit to an examination by a mental-health professional of the United States' choosing, at a time of the United States' choosing.

STIPULATION AND [PROPOSED] ORDER
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3. No later than three business days after receipt of any analysis or report relating to the examination provided for in paragraph 1 of this stipulation, the United States agrees to disclose a written summary of the expert testimony it intends to use at trial, including the opinions of the witness(es), the bases and reasons for those opinions, and the qualifications of the witness(es).

4. Failure to grant the requested continuance would unreasonably deny defense counsel and the government reasonable time for effective preparation, taking into account the exercise of due diligence and the necessary time for the examination and disclosures provided for in this stipulation. The parties thus request that the Court exclude the time period from May 23, 2006 to June 6, 2006 (the expected time in which the above-described motion of the defendant will be pending) be excluded from the Speedy Trial calculations, pursuant to 18 U.S.C. § 3161(h)(1)(F) and (h)(8)(A).

5. The parties therefore respectfully request that the Court vacate the pretrial conference currently set for June 6, 2006 and the trial currently set for June 19, 2006. The parties also respectfully request that this Court set a new pretrial conference date of July 11, 2006 at 10:30 a.m. and continue the trial date in this case to July 17, 2006 at 8:30 a.m.

DATED:

/S/
ELIZABETH FALK
Assistant Federal Public Defender

1 DATED:

/S/
TRACIE L. BROWN
Assistant United States Attorney

3 ~~PROPOSED~~ ORDER

4 PURSUANT TO STIPULATION, IT IS HEREBY ORDERED THAT:

5 1. The stipulations set forth in paragraphs 1-3, above, are hereby adopted as the order of this
6 Court.

7 2. The time period from May 23, 2006 to June 6, 2006 (the expected time in which the
8 above-described motion of the defendant will be pending) is excluded from the Speedy Trial
9 calculations, pursuant to 18 U.S.C. § 3161(h)(1)(F) and (h)(8)(A), as the ends of justice served by
10 excluding the period from May 23, 2006 to June 6, 2006, outweigh the best interest of the public
11 and the defendant in a speedy trial.

12 3. The Court vacates the pretrial conference currently set for June 6, 2006 and the trial
13 currently set for June 19, 2006. The new pretrial conference date will be July ¹⁸ 11, 2006 at 10:30
14 a.m. and the new trial date in this case will be ~~July 17~~ ^{August 7}, 2006 at 8:30 a.m.

15
16 DATED: 30 MAY 2006


VAUGHN R. WALKER
Chief Judge, United States District Court